

DATE: August 22, 1997

CASE NO: 97-ERA-12

*In the Matter of:*

WILLIAM RIGBY,  
Complainant,

v.

WASHINGTON PUBLIC POWER  
SUPPLY SYSTEM,  
Respondent.

**RECOMMENDED DECISION AND ORDER APPROVING  
SETTLEMENT AND DISMISSING COMPLAINT WITH PREJUDICE**

This matter arises under the employee protection provision of the Energy Reorganization Act of 1974 (the "Act" or "ERA"), 42 U.S.C. § 5851, and the regulations promulgated thereunder at 29 C.F.R. Part 24 (1994). The matter arises from a request for hearing filed by Washington Public Power Supply System, Respondent, on November 15, 1997. Respondent seeks an evidentiary hearing based upon the determination of Gordon L. Wilson, District Director, finding that William Rigby, Complainant, was "a protected employee engaging in protected activity within the scope of the Energy Reorganization Act, and that discrimination as defined and prohibited by the statute was a factor in the actions which comprised his/her complaint."

**Procedural History**

This matter was assigned to the undersigned administrative law judge on December 3, 1996, for the purpose of conducting a formal hearing and issuing a recommended decision and order pursuant to 29 C.F.R. §§ 24.5, 24.6 (1994). Pursuant to due notice, a formal hearing in this matter was convened on January 28 and 29, 1997, at Richland, Washington.

At the conclusion of said hearing, I granted the parties a period of sixty (60) days in which to submit proposed decisions and orders. Because the parties indicated that they had been discussing the possibility of settlement, I agreed to grant several extensions of this deadline. In an Order issued July 18, 1997, I gave the parties until July 28, 1997, within which to continue settlement discussions. If such discussions were unsuccessful, the parties were to submit their proposed decisions on or

before August 8, 1997. On July 29, 1997, this office was contacted telephonically and informed that the parties had indeed reached an agreed settlement.

On August 21, 1997, this office received the parties' Confidential Settlement Agreement and Release (the "Settlement Agreement"), which appears to have been executed by Complainant, Complainant's counsel, Respondent's counsel, and Respondent's Chief Executive Officer. Included with the Settlement Agreement was a proposed recommended decision, the parties' Joint Motion to Dismiss with Prejudice and Approve Settlement Agreement, and a sworn Affidavit of Respondent's general counsel.

### **Discussion**

As this matter has already proceeded to an evidentiary hearing, I am quite familiar with the evidentiary record and the parties' respective legal arguments. I have carefully reviewed the Settlement Agreement and hereby find that its terms are fair, reasonable and adequate in light of the extensive record in this matter. I also believe that the settlement is in the best interests of both Complainant and Respondent. As such, I shall recommend final approval of the same. Moreover, based upon the Settlement Agreement and the parties' joint motion, I further recommend dismissal of the above-captioned matter with prejudice.

In the cover letter which accompanied the Settlement Agreement, Respondent's counsel asserts that "[t]he settlement and its terms include nonpublic commercially sensitive information, the disclosure of which would cause substantial competitive harm to [Respondent]." In his sworn affidavit, Respondent's general counsel states that "[t]he nonpublic, commercially sensitive information and financial information contained within the settlement agreement between the [parties] would cause substantial competitive harm to [Respondent] if disclosed." Consequently, Respondent asserts its rights to notification prior to any disclosure of the Settlement Agreement and its terms based upon a request filed under the Freedom of Information Act, as amended, 5 U.S.C. § 552. See 29 C.F.R. § 70.26 (1994).

The affidavit of Respondent's general counsel substantially complies with the U.S. Department of Labor's regulatory procedures contained at 29 C.F.R. § 70.26(b); See also Stephenson v. National Aeronautics & Space Administration, 94-TSC-5 (Sec'y June 19, 1995). Accepting the sworn statement of Respondent's general counsel, I find that the Settlement Agreement and its terms include information which could reasonably be expected to cause substantial competitive harm to Respondent, and therefore constitutes confidential commercial information. As such, Respondent is entitled to written notification prior to any disclosure of the same based upon a request filed under the Freedom of Information Act. 29 C.F.R. § 70.26(c) (1994); See also McCoy v. Utah Power/Pacific Power, 94-CAA-6 (Sec'y Mar. 22, 1994). Pursuant to the standing policy of the Office of Administrative Law Judges, the parties' Settlement Agreement will be forwarded to the Administrative Review Board in a sealed envelope clearly marked as containing "Predisclosure Notification Materials."

### **RECOMMENDED ORDER**

Based upon the foregoing, and pursuant to 29 C.F.R. § 24.6, it is HEREBY RECOMMENDED that the Administrative Review Board issue a final order approving the parties' Confidential Settlement Agreement and Release, and further RECOMMENDED that the above-captioned matter be dismissed with prejudice.

Entered this \_\_\_\_ day of August, 1997, at Long Beach, California.

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DANIEL L. STEWART  
Administrative Law Judge